

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE: §  
§  
**GEORGE DALE WIGINGTON** §      CASE NO. 18-42230  
*dba WYLIE INDUSTRIES* §  
*dba WYLIE INVESTMENT GROUP,* §      CHAPTER 13  
*Debtor* §

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**GEORGE DALE WIGINGTON** §  
*Plaintiff* §  
§  
v. §      ADVERSARY NO. 19-04074  
§  
**NATIONSTAR MORTGAGE LLC** §  
**DBA MR. COOPER and SELECT** §  
**PORTFOLIO SERVICING, INC** §  
*Defendants* §

**PLAINTIFF'S MOTION TO EXTEND DISCOVERY DEADLINE**  
**AND DISPOSITIVE MOTION DEADLINE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Plaintiff George Wigington (“Plaintiff”) respectfully submits Plaintiff’s Motion to Extend Discovery Deadline and Dispositive Motion Deadline, such that the Scheduling Order in this case is modified to reflect a 90-day extension of the discovery cutoff, until February 28, 2021, as well as a 91-day extension of the dispositive motion deadline, until March 22, 2021.

**RELEVANT HISTORY**

1. On August 10, 2020, the Court entered a Memorandum Opinion [DOC 65] dismissing “each and every cause of action seeking affirmative relief and damages, and each and every cause of action seeking lien avoidance or release. . . against Nationstar and SPS” leaving only Plaintiff’s objection to claim pending.

2. The Court entered an Order Arising from Management Conference [DOC 67] on August 13, 2020 setting the Discovery Deadline as November 30, 2020 and providing that the deadline for dispositive motions was twenty-one days after the discovery deadline.

3. On September 14, 2020, the Court entered an Amended Judgment [DOC 70] reinstating “any causes of action limited to allegations regarding noticing acceleration, noticing foreclosure sales, or appointing or noticing appointment of substitute trustees in violation of the note or deed of trust, or applicable law.”

4. Plaintiff served requests for production and interrogatories on counsel for Nationstar and SPS on October 31, 2020 by email.

5. SPS served a response on Plaintiff on November 28, 2020 by mail objecting, *inter alia*, that the discovery requests were “untimely and not properly served.”

### **STANDARD FOR EXTENSION OF DISCOVERY DEADLINE**

6. FED. R. CIV. P. 16(b)(4) provides that a scheduling order may only be modified “for good cause and with the judge’s consent.” The United States Court of Appeals for the Fifth Circuit has explained there are four factors in determining whether to allow a scheduling modification for good cause under Rule 16(b): (1) the explanation for the failure to complete discovery on time, (2) the importance of the amendment to the scheduling order, (3) the potential prejudice in allowing the amendment, and (4) the availability of a continuance to cure such prejudice. See *Leza v. City of Laredo*, 496 F. App’x 375, 376 (5th Cir. 2012).

### **ARGUMENT**

#### **Reason for Incomplete Discovery**

7. At the time of the management conference on August 13, 2020 the only pending cause of action was the objection to claim because all affirmative relief claims had been dismissed. As a

result, Plaintiff request only three months for discovery. The reinstatement of claims against Nationstar necessitates depositions which can only be scheduled after Plaintiff learns the identity of relevant witnesses who handled Plaintiff's mortgage account within Nationstar. Plaintiff would have requested six months for discovery if the affirmative relief claims were pending at the time of the conference hearing. Notably, Nationstar was not present or represented at the conference hearing.

8. The discovery objections raised by SPS are based on the fact that the time stamp on the email to SPS' attorney was minutes after midnight leading to a discovery request made twenty-nine days before the deadline. However, the discovery request is served when it is sent which was at 11:58 p.m. on October 31, 2020 based on the time stamp on the outgoing email.

9. The second discovery objection raised by SPS is based on a claim that service by email on SPS' counsel was improper due to lack of consent to service by electronic means. However, local rule 9013(h) authorizes "upon another party by electronic means that are consistent with technical standards established by the Judicial Conference of the United States and are in compliance with the *Administrative Procedures for the Filing, Signing, and Verifying of Documents by Electronic Means* as set forth in TXEB Appendix 5005." The rule states that the "transmission facilities of the Court may be utilized to accomplish such service," but does not limit the electronic means to only the Court's transmission facilities. This is consistent with District Court Local Rule CV-5 (d) which provides that "Except with regard to *pro se* litigants that have not consented in writing to receiving service by electronic means, parties may serve copies of pleadings and other case related documents to other parties by facsimile or electronic means in lieu of service and notice by mail." In addition, attorneys consent to service by electronic means when they

register for CM/ECF in both the district court and the bankruptcy court.

10. The objections to discovery themselves require Plaintiff to request an extension to the discovery deadline to enable the Court to decide Plaintiff's Motion to Compel which will be filed as soon as possible.

### **Importance**

11. The pending discovery requests critical to Plaintiff's causes of action and to the objection to claim. In fact, some of the documents such as the transaction history are required for SPS to prove its claim. The additional discovery is important because it relates to the revived causes of action including knowledge and state of mind of Nationstar personnel related to those affirmative claims for relief.

### **Potential Prejudice**

12. Defendants have not conducted any discovery or responded in good faith to any discovery requests. There is no prejudice in simply being required to respond to discovery requests once. Defendants will not have to perform any additional discovery beyond that normally expected in a case such as this.

### **Availability of Continuance**

13. No trial date has been established, therefore a continuance is available per se.

## **CONCLUSION**

14. In conclusion, for the foregoing reasons, Plaintiff has shown good cause for and respectfully requests that the Court grant this motion and extend the discovery deadline 90-days to February 28, 2021 and the dispositive motion deadline for 91-days to March 22, 2021.

15. In the alternative, Plaintiff requests that the Court extend the discovery deadline as required to enable Plaintiff to cure any defects found in the service of propounded discovery

requests and that the dispositive motion deadline be similarly extended.

16. Finally, Plaintiff request such other relief, in equity or at law, to which he may show himself justly entitled.

Dated: November 30, 2020

Respectfully submitted,

/s/ George Dale Wigington  
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#### **CERTIFICATE OF SERVICE**

I hereby certify that on November 30, 2020, a true and correct copy of the foregoing was served on the following by e-mail and CM/ECF.

/s/ George Dale Wigington  
George Dale Wigington

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